

TAXATION:

Accounts receivable identified as personal property subject to assessment for purposes of taxation.

*Supplementary
Opinion attached.*

9756-59-9977 RS Mo 1929

October 2, 1933

10-9

FILED
38

Honorable T. J. Harper
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Sir:

Your request for an opinion dated September 25, 1933, was referred to me by General McKittrick. I find that your request is in the following form:

"I would like an opinion for the benefit of the Assessor and County Judges, and that is

'Does the outstanding accounts-book accounts of a merchant come under, and are they taxable as merchant stock' or do they represent personal property."

Section 9756 Revised Statutes Missouri 1929, provides in part as follows:

"The assessor or his deputy or deputies shall between the first days of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property in the county, town or district, and assess the value thereof, in the manner following to-wit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable property owned by such person, or under the care, charge

or management of such person, except merchandise which may be required to pay a license tax, being in any county of this state in accordance with the provisions of this chapter, and the person listing the property shall enter a true and correct statement of such property in a printed or written blank prepared for that purpose; which statement after being filled out, shall be signed and sworn to, to the extent required by this chapter by the person listing the property and delivered to the assessor. Such lists shall contain;*****

eleventh, all other property not above enumerated (except merchandise, bills and accounts receivable, and other credits of a merchant or manufacturer, arising out of the sale of goods, wares and merchandise, which have been returned for taxation, under sections 10681 and 10111 R. S. 1929,) and its value;*****

and every other species of property not exempt by law from taxation."

Section 9759 provides as follows:

"The oath to be signed and sworn to by each person making the statement of property required by this chapter shall be as follows: I, _____, do solemnly swear or affirm that the foregoing list contains a true and correct statement of all the property taxable by the laws of the State of Missouri, including*****and all other property, and its value, which I owned on the first day of June, 19____, or which I had under my charge or management, or any money or

property due me on said day from solvent persons or companies, on notes, accounts or otherwise*****"

Section 9795 Revised Statutes Missouri 1929, provides as follows:

"No person shall be required to list a greater portion of any credits than he believes will be received or can be collected.*****"

Section 9977:

"*****The term 'credits', wherever used in the chapter, shall be held to mean and include***** every claim or demand for money, interest, or other valuable thing due or to become due.*****"

Our Supreme Court in the case of State ex rel. v. Gehner, 316 Mo. 694, l. c. 696, said:

"Accounts receivable are amounts owing to a creditor on open account. They are in the nature of credits which, under the statute (Sec. 12967, R.S. 1919), include 'every claim or demand for money, interest or other valuable thing, due or to become due.' Thus defined they are declared by the statute above cited to be personal property. As such they are proper subjects of taxation within the limitations stated."

In the case of State ex rel. v. Tobacco Company, 140 Mo. 218, l. c. 222, our Supreme Court said:

"Defendant company insists that it is a manufacturer and that it should have been licensed and taxed on all raw material, finished products, and tools, machinery, and appliances, as is provided by section 6821, Revised Statutes 1889, and page 217, Laws of 1893, for

taxing and licensing merchants, and that as the defendant was not thus assessed that the assessment is void and also the tax.

The assessment was not, we think, void because the property was assessed as ordinary personal property, even though defendant may have been at the time a manufacturer.*****

Defendant's personal property was properly taxed in Montgomery county for the tax sued for.*****"

I am assuming that in your request when you used the phrase 'accounting book of accounts' you are referring to accounts receivable as shown by the merchants' open account books, and starting with this assumption our Supreme Court has ruled in the Gehner case that accounts receivable are personal property and subject to assessment as such. There is no doubt that accounts receivable shall be turned in on the personal assessment list, for the property owner takes oath that his assessment list contains all money or property due him on June first from solvent persons on account. Then too, under the law the assessor is charged with assessing all personal property not specifically exempted by law and accounts receivable are not exempted but in fact the assessor is specifically required to make a return on all other personal property not specifically enumerated and accounts receivable fall within this classification.

It is true that under the eleventh enumeration of taxable property as set out in Section 9756 as revised in 1929, our Legislature is shown to have excepted merchandise, bills and accounts receivable and other credits of a merchant arising out of the sale of goods which has been returned for taxation under the provisions of Section 10081 Revised Statutes Missouri 1929, but this exception as shown in the Session Acts of 1923, page 375, provides that when this law was passed only merchandise was excepted and this purported exception of accounts receivable as it appears in the revised statutes is not a true copy of the law as passed, and is an error which should be charged against those who revised the statutes.

If accounts receivable are not assessable as personal property then our Supreme Court was wrong in the Gehner case above decided

October 2, 1933

in 1927 by the court en banc, construing this very section of law passed in 1923 and decided this very point in issue.

It is to be noted further that Section 10081 R. S. Mo. 1929 as amended in the Laws of 1931, page 360, which provides a fair method for determining the reasonable amount due the State of Missouri as a merchant's license tax, is based on the amount of merchandise said merchant carries in stock and none of its provisions take into consideration the merchant's accounts receivable as a basis for determining the merchant's license tax. It is true that the merchant's license tax is a property tax and as such his merchandise should not be doubly assessed, hence the exception in the statute. The Tobacco case, supra, holds that even merchandise is subject to a property tax under the provisions of Section 9756, and the right to contest an unjust assessment must be in the method provided by law. It is true that no person is required to list any credit or accounts receivable for taxation when the same is believed by him to be not collectible.

It follows that the opinion of this office is that under the Missouri law relating to taxation, accounts receivable are not merchandise but are personal property and should be returned and assessed as such for the purpose of taxation.

Respectfully submitted,

Wm. ORR SAWYERS
Assistant Attorney General,

APPROVED:

ROY MCKITTRICK
Attorney General.

WOS:H